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9 San Jose Police Officers' Association

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SANTA CLARA

12
13 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF
17 ADMINISTRATION FOR POLICE AND
FIRE DEPARTMENT RETIREMENT
18 PLAN OF CITY OF SAN JOSE, and DOES
1-10, inclusive,

19 Defendants.

No.

**DECLARATION OF ROB MILLARD IN
SUPPORT OF SJPOA'S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION**

20
21 I, Rob Millard, declare and say:

22 1. I am employed by the City of San Jose as a Police Lieutenant and a
23 member of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). I have
24 worked for the City of San Jose since 1989 as a Police Officer, a Police Sergeant and now
25 a Police Lieutenant. Before that, I worked as a Police Officer for Santa Clara Police
26 Department from 1987 to 1989. As a result of my employment with the City of San Jose, I
27 am familiar with the facts in this matter, as well as those set forth in this Declaration. If
28 called upon as a witness, I could and would testify competently to these facts.

1 2. I submit this declaration in support of the SJPOA's *Ex Parte* Application
2 for Temporary Restraining Order and Order to Show Cause Regarding Preliminary
3 Injunction ("*Ex Parte* Application for TRO").

4 3. In July 2011, San Jose Police Officers agreed to a 10% pay cut that will
5 be in effect until at least June 2013. This pay cut is in addition to increases to employee
6 contributions for retirement benefits (including increases to employee-paid retirement and
7 retiree health care costs) that amount to an approximate additional 17% decrease to my
8 take-home pay.

9 4. I am informed that this voluntary pay cut, combined with increases to the
10 employee-paid retirement/retiree health care costs in recent years, have made San Jose's
11 police officers among the lowest paid police in the region taking into account total
12 compensation. We currently pay more into our retirement than any other police agency in
13 the region. Effective June 24, 2012, we are slated for an additional approximate 2%
14 decrease to take home pay which will put us even farther behind other law enforcement
15 agencies in the region.

16 5. The cumulative impact of the pay reduction along with the increases to
17 employee-paid retirement/retiree health care costs has forced many officers to take
18 positions with other police agencies in the region. I know several officers who have
19 already left the department and many more who are considering leaving should additional
20 decreases to pay and/or pension benefits occur. As a result, the morale among the Police
21 Officers at the Police Department is also at the lowest level that I have ever seen and I
22 believe that staffing is already at critical levels.

23 6. I am married and have four daughters under the age of eighteen. All of
24 my children are in private school. My wife works as a teacher and had her pay reduced by
25 25% over the past year.

26 7. The prior pay reduction and increases to employee-paid retirement/retiree
27 health care costs combined with the pay cut my wife took this past year have forced our
28 family to cut back on almost all non-essential spending in order to have enough money

1 each month to pay our family's living expenses. In order to pay my bills for necessities,
2 including our mortgage, I have been unable to save any extra money for emergencies and
3 we have almost no money left for discretionary expenses. Even with this significant
4 decrease in our lifestyle, we still struggle to stay current with our mortgage payments.

5 8. Measure B, if implemented, would require that I and other San Jose
6 police officers begin paying 50% of the costs of retiree healthcare, including both the
7 normal cost and unfunded liability. Currently, the unfunded liability percentage is 32%
8 which means that my salary immediately will be decreased by at least another 9% for the
9 unfunded retiree health care costs (because we are already paying 7% of the unfunded
10 retiree health care costs) although I will receive the same level of benefits from the City.
11 If this occurs, I am almost certain that we will not be able to afford our mortgage and will
12 lose our house. We simply do not have any more corners to cut.

13 9. I have also been informed that the City will start charging me for 50% of
14 the unfunded pension liability although the implementation of the unfunded pension
15 liability charges will be phased in over time. The implementation of this additional
16 decrease will absolutely devastate my family's financial situation because it will reduce
17 my salary by an additional 16% when fully implemented. I have never previously had to
18 pay for unfunded pension liability..

19 10. Measure B will also modify disability retirement for San Jose police
20 officers, as detailed below, such that it will no longer be of any benefit to me. I consider
21 comprehensive disability retirement protection an absolutely crucial employment benefit
22 for my line of work because police work is extremely physically demanding and
23 dangerous. Although I have been lucky enough to escape serious injury throughout my
24 career, I have seen first hand how officers get injured in the line of duty and are unable to
25 return to work. I would not have chosen a career in law enforcement with the San Jose
26 Police Department without the knowledge that my family would be protected with full
27 retirement benefits in the event that I am disabled as a result of actions taken in the line of
28

1 duty while performing my job protecting the citizens of San Jose. I simply cannot risk my
2 family's financial future.

3 11. Under the City of San Jose's current disability retirement plan for police
4 officers, I would be deemed disabled if I am no longer able to perform duties within my
5 peace officer classification (i.e. the normal duties of a police officer). Under the current
6 system, if I was rendered disabled, I would be entitled to retirement disability payments of
7 50% of my current salary for the first 20 years of service and an additional 4% for every
8 year of service thereafter. The City explained these rights to me many times throughout
9 my career, starting in the Police Academy, and I have relied on these rights throughout my
10 career to protect my family's financial security should I be injured in the line of duty.

11 12. Measure B, if passed by San Jose electorate, would eviscerate the police
12 disability retirement plan. My understanding is that instead of analyzing whether I will be
13 able to perform police officer functions, the City will analyze whether I can perform the
14 job functions of any position within the Police Department, including jobs that consist
15 primarily of administrative tasks. If I am found to be physically able to perform the job
16 functions of any position within the Police Department, my disability application will be
17 denied. More troubling, if the job or jobs that I have been found to be able to perform are
18 occupied, I will be terminated from city employment without any retirement benefits. In
19 my experience, the non-police jobs in the department are Alarm Technician (1 positions),
20 Crime Prevention Specialist (5 positions), Latent Fingerprint Examiner (5 positions), and
21 Police Artist (1 position). I do not recall when any of these positions was vacant for any
22 significant period of time.

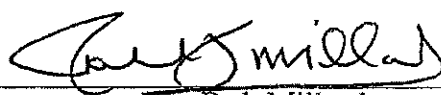
23 13. If the changes delineated in the prior paragraph are implemented, it will
24 have an immediate and catastrophic impact on me if I become disabled as a result of
25 actions taken in the line of duty, as it will almost certainly eliminate the availability of any
26 retirement pension. Essentially, the changes have all but guaranteed that I will be
27 terminated and left without the means to support myself and my family as a result of being
28 injured in the line of duty.

1 14. In light of this risk, if Measure B passes, I and (I am informed) many of
2 my colleagues will look for law enforcement work at departments that maintain full
3 disability retirement coverage, rather than risk being hung out to dry during such a time of
4 need. This is of great concern to me because I believe staffing is already at critically low
5 levels and my officers' safety is compromised on a daily basis as a result. I have already
6 seen a fellow officer (and friend) almost killed because of the lack of patrol cars we can
7 put out on the street at any given time. In this particular officer's case, the closest patrol
8 car (and therefore backup) was 1.2 miles away which is a long distance when an officer's
9 life is being threatened. If Measure B passes, and staffing levels fall even further (which I
10 am confident they will), I am gravely concerned that we will have many more officer
11 injuries and/or fatalities.

12 15. Moreover, as a Watch Commander with approximately 80 officers under
13 my watch, I am placed in a very difficult position where I have to ask my officers to put
14 their life and limb on the line when I know that they will be terminated, and their family
15 left without any help, should they get seriously injured. The stress associated with this
16 change and the effect it will have on my officers has increased my blood pressure
17 tremendously over the past couple of months. I also have already seen a decline in the
18 number of officers who volunteer for high risk assignments and I believe that the
19 reluctance to do what were previously sought after high-risk assignments will only
20 increase should Measure B pass. In fact, I believe the San Jose Police Department will
21 find it difficult, if not impossible, to find enough officers, not only to fill these crucial
22 roles, but also to simply maintain an adequate force to fulfill its public-safety and crime-
23 prevention roles.

24 I declare under penalty of perjury under the laws of the State of California that
25 the foregoing is true and correct and that this declaration is executed this 3rd day of
26 June, 2012, SAN JOSE, California.

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Rob Millard